

## PATENT COOPERATION TREATY

PCT

REC'D 13 JUL 2001

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## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

14



Applicant's or agent's file reference CM2341/2B	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/US00/17638	International filing date (day/month/year) 27/06/2000	Priority date (day/month/year) 28/06/1999
International Patent Classification (IPC) or national classification and IPC A61K7/50		
Applicant THE PROCTER & GAMBLE COMPANY. et al.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 7 sheets, including this cover sheet.
  - ☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☒ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☒ Certain defects in the international application
- VIII ☒ Certain observations on the international application

Date of submission of the demand  27/12/2000	Date of completion of this report  11.07.2001
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized officer  Hillebrecht, D  Telephone No. +49 89 2399 8168  

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No. PCT/US00/17638

## I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):  
**Description, pages:**

1-37 as originally filed

### **Claims, No.:**

1-10 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).
3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:
- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)):

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(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

## III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application.

☒ claims Nos. 10.

because:

☒ the said international application, or the said claims Nos. 10 relate to the following subject matter which does not require an international preliminary examination (*specify*):  
**see separate sheet**

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for the said claims Nos. .

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the standard.

☐ the computer readable form has not been furnished or does not comply with the standard.

## V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes:	Claims	3,4
	No:	Claims	1,2,5-10
Inventive step (IS)	Yes:	Claims	
	No:	Claims	1-10
Industrial applicability (IA)	Yes:	Claims	1-9

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No: Claims

2. Citations and explanations  
**see separate sheet**

**VII. Certain defects in the international application**

The following defects in the form or contents of the international application have been noted:  
**see separate sheet**

**VIII. Certain observations on the international application**

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:  
**see separate sheet**

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EXAMINATION REPORT - SEPARATE SHEET**

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International application No. PCT/US00/17638

Reference is made to the following documents:

- D1: EP-A-0 287 876 (HENKEL) 26 October 1988
- D2: US-A-5 804 205 (EPSTEIN ET AL.) 8 September 1998 cited in the application
- D3: WO 99 27904 A (JOHNSON & SON INC.) 10 June 1999 cited in the application

- III. For the assessment of the present claim 10 on the question whether it is industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.

Claim 10 relates to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of this claim (Article 34(4)(a)(i) PCT).

- V. The subject-matter of the present claims is neither new nor involves an inventive step, in contrast to Article 33(1) to (3) PCT.

1. Present claim 1 claims a cosmetic composition comprising a quaternary ammonium agent and more than 0.5 % of a pantothenic acid compound.
2. D1 discloses compositions comprising 0.1 to 8 wt% panthenol and a quaternary ammonium compound. (D1, claims 1 and 3 and examples 1 to 7) The compositions are applied to the scalp, which is part of the skin.
3. The present application is directed to the problem of providing compositions giving the benefits of pantothenic acid derivatives without showing negative side-effects. The problem can be overcome by adding a quaternary ammonium compound to the composition.

It is submitted that the problem, if there is any, only can be solved when a considerable amount of quats is present. However, the application even includes

composition comprising solely minor amounts. The subject-matter of the claims thus cannot be regarded as inventive within the entire scope of the claims.

Moreover, a huge number of cosmetic products comprise cationic surfactants/emulsifiers, which are generally quaternary ammonium compounds. Furthermore, panthenol etc. is well known for its beneficial effects to skin and hair and must be regarded as a conventional additive (D2, col. 4, lines 33 to 41). The skilled worker, who would like to add quaternary ammonium compounds in order to take the advantages of such compounds (cf. D2 and D3) would formulate respective compositions without involving an inventive step. Furthermore, D2 and D3 show compositions differing from the presently claimed ones, in that the amount of panthenol is below 0.5 wt%. Applicants did not show that this threshold has any significance in the present application nor is there any indication that the claimed compositions show any unexpected effect. In contrast, it appears to be strange that panthenol would irritate the skin while it is known to be effective in wound healing. However, the combination of both components in a skin care composition would appear to be very obvious.

4. The subject-matter of the dependent claims is either already known from D1 or at least obvious to those skilled in the art.

VII.

1. Compounds of formulae (IV), (V), and (VIII) on pages 8 and 9, respectively, do not reflect ammonium compounds.
2. Obviously the names of the compounds on page 12 are not correct. Apparently these compounds should be regarded as "esterquats". However, e.g. the term "canolyl-oxy" reflects an alkyloxy group rather than an acyloxy (ester) group.
3. The documents EP-A-789 076 and US-A-5880289 cited on pages 2 and 36, respectively, are apparently not directed to the field of cosmetics or to a related technical field.

VIII.

1. Claim 1 is silent on the basis for the amount of the pantothenic acid (e.g. % by

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wt.?), in contrast to Article 6 PCT.

2. The vague and imprecise statement in the description on page 27 "spirit of the invention" implies that the subject-matter for which protection is sought may be different to that defined by the claims, thereby resulting in lack of clarity (Article 6 PCT) when used to interpret them (see also the PCT Guidelines, III-4.3a).

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## NOTIFICATION OF ELECTION

(PCT Rule 61.2)

From the INTERNATIONAL BUREAU

To:

Commissioner  
US Department of Commerce  
United States Patent and Trademark  
Office, PCT  
2011 South Clark Place Room  
CP2/5C24  
Arlington, VA 22202  
ETATS-UNIS D'AMERIQUE  
in its capacity as elected Office

Date of mailing (day/month/year) 08 February 2001 (08.02.01)	
International application No. PCT/US00/17638	Applicant's or agent's file reference CM2341/2B
International filing date (day/month/year) 27 June 2000 (27.06.00)	Priority date (day/month/year) 28 June 1999 (28.06.99)
Applicant EVANS, Erica, Louise et al	

1. The designated Office is hereby notified of its election made:

☒ in the demand filed with the International Preliminary Examining Authority on:  
27 December 2000 (27.12.00)

☐ in a notice effecting later election filed with the International Bureau on:  
\_\_\_\_\_

2. The election ☒ was  
☐ was not

made before the expiration of 19 months from the priority date or, where Rule 32 applies, within the time limit under Rule 32.2(b).

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No.: (41-22) 740.14.35	Authorized officer Juan Cruz Telephone No.: (41-22) 338.83.38
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# PATENT COOPERATION TREATY

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## INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference <b>CM2341/2B</b>	<b>FOR FURTHER ACTION</b> see Notification of Transmittal of International Search Report (Form PCT/ISA/220) as well as, where applicable, item 5 below.	
International application No. <b>PCT/US 00/ 17638</b>	International filing date (day/month/year) <b>27/06/2000</b>	(Earliest) Priority Date (day/month/year) <b>28/06/1999</b>
Applicant  <b>THE PROCTER &amp; GAMBLE COMPANY. et al.</b>		

This International Search Report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This International Search Report consists of a total of 3 sheets.  
☒ It is also accompanied by a copy of each prior art document cited in this report.

**1. Basis of the report**

- a. With regard to the **language**, the international search was carried out on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ the international search was carried out on the basis of a translation of the international application furnished to this Authority (Rule 23.1(b)).
- b. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international search was carried out on the basis of the sequence listing :
- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ the statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ the statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished

2. ☐ **Certain claims were found unsearchable** (See Box I).

3. ☐ **Unity of invention is lacking** (see Box II).

**4. With regard to the title,**

- ☐ the text is approved as submitted by the applicant.
- ☒ the text has been established by this Authority to read as follows:

**COSMETIC COMPOSITIONS CONTAINING PANTOTHENIC ACID**

**5. With regard to the abstract,**

- ☒ the text is approved as submitted by the applicant.
- ☐ the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box III. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

**6. The figure of the drawings to be published with the abstract is Figure No.**

- ☐ as suggested by the applicant.
- ☐ because the applicant failed to suggest a figure.
- ☐ because this figure better characterizes the invention.
- ☐ None of the figures.

## INTERNATIONAL SEARCH REPORT

International Application No

PCT/US 00/17638

## A. CLASSIFICATION OF SUBJECT MATTER

IPC 7 A61K7/50 A61K7/00 A61K7/48

According to International Patent Classification (IPC) or to both national classification and IPC

## B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)

IPC 7 A61K

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practical, search terms used)

WPI Data, PAJ, EPO-Internal, CHEM ABS Data

## C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
X	EP 0 287 876 A (HENKEL) 26 October 1988 (1988-10-26) claim 1; table 1	1,2
Y	---	3-10
Y	US 5 804 205 A (EPSTEIN ET AL.) 8 September 1998 (1998-09-08) cited in the application claims 1-4; table 1	3-6,8-10
Y	WO 97 39733 A (THE PROCTER & GAMBLE COMPANY) 30 October 1997 (1997-10-30) example 1 page 19, line 19 - line 29 page 9, line 27 page 5, line 33 -page 8, line 34 --- -/--	7,8



Further documents are listed in the continuation of box C.



Patent family members are listed in annex.

## \* Special categories of cited documents:

"A" document defining the general state of the art which is not considered to be of particular relevance

"E" earlier document but published on or after the international filing date

"L" document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)

"O" document referring to an oral disclosure, use, exhibition or other means

"P" document published prior to the international filing date but later than the priority date claimed

"T" later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention

"X" document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone

"Y" document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art.

"&amp;" document member of the same patent family

Date of the actual completion of the international search

19 October 2000

Date of mailing of the international search report

25/10/2000

Name and mailing address of the ISA

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Authorized officer

Alvarez Alvarez, C

## INTERNATIONAL SEARCH REPORT

International Application No

PCT/US 00/17638

## C.(Continuation) DOCUMENTS CONSIDERED TO BE RELEVANT

Category °	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
Y	W0 96 03970 A (WITCO CORPORATION) 15 February 1996 (1996-02-15) page 1, line 4 - line 6 page 3, line 7 - line 24 page 7, line 27 -page 9, line 25 page 16 "Formulation 1-1" page 27 "Formulation 3-3" page 28 "Formulation 3-4" claims 12-21 -----	7
A	W0 99 27904 A (S.C.JOHNSON & SON INC.) 10 June 1999 (1999-06-10) cited in the application table 1 page 11, line 10 - line 22 page 12, line 5 - line 21 -----	1,2

# INTERNATIONAL SEARCH REPORT

Information on patent family members

International Application No

PCT/US 00/17638

Patent document cited in search report	Publication date	Patent family member(s)	Publication date
EP 287876 A	26-10-1988	DE 3711841 A AT 84964 T DE 3877800 A ES 2046225 T JP 2749816 B JP 63258804 A US 4900545 A	27-10-1988 15-02-1993 11-03-1993 01-02-1994 13-05-1998 26-10-1988 13-02-1990
US 5804205 A	08-09-1998	AU 7462396 A CA 2247381 A WO 9730679 A	10-09-1997 28-08-1997 28-08-1997
WO 9739733 A	30-10-1997	AU 3114697 A AU 3115097 A CA 2251790 A CN 1219871 A CZ 9803422 A EP 0896522 A JP 11508281 T WO 9739734 A US 5939082 A	12-11-1997 12-11-1997 30-10-1997 16-06-1999 17-02-1999 17-02-1999 21-07-1999 30-10-1997 17-08-1999
WO 9603970 A	15-02-1996	US 5552137 A AU 689940 B AU 3214495 A BR 9508862 A CA 2196803 A CN 1158560 A EP 0767653 A JP 10506882 T US 5610187 A	03-09-1996 09-04-1998 04-03-1996 16-09-1997 15-02-1996 03-09-1997 16-04-1997 07-07-1998 11-03-1997
WO 9927904 A	10-06-1999	AU 1611599 A EP 1035832 A	16-06-1999 20-09-2000